Considerations about Chinese E-commerce legislation

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Alamusi
A few days ago, The queen of the Internet, Mary Meeker, the KPCB company issued a Report:

1995, The world's top 15 Internet Co, 13/15 are American, the other are one Canada, one Germany.

2015, 11/15 are also American. But the 4/15 are all Chinese company.

Third is alibaba, sixth is tencent, eighth is baidu, eleventh is jingdong.


Then, what’s happen in china in the 15 years.
### 全球互联网上市公司排名（按市值排名）

#### 1995年12月

<table>
<thead>
<tr>
<th>Company</th>
<th>Home</th>
<th>Market Cap. (SMM)</th>
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<tbody>
<tr>
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<td>Apple</td>
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<td>PSINet</td>
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<td>742</td>
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<td>Netcom On-Line</td>
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<td>326</td>
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<td>325</td>
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<td>iStar Internet</td>
<td>Canada</td>
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<td>Live Microsystems</td>
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<td>iLive</td>
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**Total Market Cap of Top 15**

$16,752

#### 2015年5月

<table>
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<th>Company</th>
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**Total Market Cap of Top 15**

$2,415,867

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来源：Morgan Stanley, Capital IQ, Bloomberg

注：市值排名数据为2015年5月22日和1995年12月31日，分别对应了不同的年份。
The major reasons are the seven:

1. China joined the WTO since 2001;

2. Per capita GDP of China exceeded 1,000 dollars; Consumption began to upgrade, which happened in 2003.

3. Online payment after 2005 began to spread, such as Alipay.

4. Private logistics courier companies gradually became the main logistics.

5. After the 2008 financial crisis, China factories major from foreign trade to domestic trade, needing new sales platforms.

6. The government has generally adopted a relaxing control measure. Such as tax, business registration, license, platform responsibility, financial services, etc.

7. China's second and third line cities, rural areas, towns, there is a huge consumer demand that has not been met, even now.
In McKinsey Co. advisory report in 2013, the four points of the electronic commerce of China and the United States are compared. The results may be similar to Europe:

1. High proportion of trading platform transactions.
2. Electronic technology companies engaged in e-commerce rather than business enterprise e-commerce.
3. C2C get the Large proportion.
4. The majority is physical products, such as shoes, not virtual products and services.

These have decided the form and pattern of the electronic commerce in China today, with greater creativity and social influence.

These are why the four companies were able to rise so rapidly in the twenty years.
Further more, in the last five years, this great situation has been further developed. Mainly in:

1. Chinese smart phones and mobile Internet rapidly spread.

2. Support policy upgrade and deepen. One is the Internet PLUS policy, which is the most popular word in China now. Another is policy to encourage innovation.

3. O2O Rapid development, such as taxi software, Internet Banking, online meal ordering, online medical treatment.

   **Yu E Bao**, which founded in February 8, 2014. At that time, ninety-nine percent of people do not know it. But now, ninety-nine percent of people know Internet Banking and **Yu E Bao**.

4. Various applications start to integrate, For example, Cloud Computing, Big Data, Logistics Network, Smart City, Wearable Devices, Smart Home.

Great opportunities are showing. According to Jack Ma, Alibaba only completed a maximum of thirty percent of their task. This is to say, when they complete, they will exceed Apple.
But the problems that we are facing in the law are also obvious and noticeable.

1. The legal responsibility of the trading platform is not clear in many cases.

2. The government is not adaptive to the management of such a large and active market. In particular, a virtual market. For example, at the beginning of this year, State Administration for Industry and Commerce and Alibaba made a big conflict incident.

3. The lack of adequate specification of the competition between the electronic commerce enterprises or in the trading platform, such as the famous war between the 360 and QQ company.

4. There is a huge contradiction and friction between the e-commerce enterprises and the traditional industries in the competition, traditional industries give government big press.

5. There are many legal gaps, some new legal subjects and objects can not be protected in the existing laws.
In this way, in the next ten years, in addition to the electronic commerce law, China also need to legislate many laws:

Information security law, Personal information protection law, Credit law, Internet banking law, Internet management related laws.

Next, I will still focus on the introduction of this has been started in Oct. 2013, is expected to form the first draft, in the end of this year, the e-commerce law legislation.
Four pictures about Chinese E-commerce legislation

Three principal advices about legislation

Three advice for the international Internet governance
First picture about Chinese e-commerce legislation: Picture of relevant laws
So many laws are relevant to E-commerce, almost all of the laws, we separate these to two kinds:

- Law with strong relevance: general rule of civil law, Contract Law, Law of Electronic Signature, tort liability law, product quality law, Law on Protection of the Rights and Interests of Consumers, food safety law and so on.

- Law with weak relevance: inheritance law, maritime law, law on protection of Minors, labour law and so on.

In this way, the task of us are easier.
Second picture about Chinese E-commerce legislation: Picture of E-business legislation’s system, this system formed before the legislation: We classified then to six scopes: website management, information workflow, fund flow, safeguard and maintenance rights, special field of E-commerce. About 500 regulations and department regulations, local regulations.

<table>
<thead>
<tr>
<th>电子商务法</th>
<th>商流：《电子签名法》、工商总局《网络交易管理办法》、商务部《第三方电子商务交易平台管理办法》、《杭州市网络交易管理办法》、深圳市关于可信交易环境的系列规定，《上海市促进电子商务发展规定》等</th>
</tr>
</thead>
<tbody>
<tr>
<td>网站管理</td>
<td>信息流</td>
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<tr>
<td>《互联网IP地址备案管理办法》</td>
<td>《互联网信息服务管理办法》</td>
</tr>
<tr>
<td>信息安全的相关规定</td>
<td>个人信息保护的相关规定</td>
</tr>
</tbody>
</table>

- 《电子签名法》
- 《网络交易管理办法》
- 《第三方电子商务交易平台管理办法》
- 《杭州市网络交易管理办法》
- 《上海促进电子商务发展规定》
- 《食品安全法》
- 《广告法》
- 《对外贸易法》
The third picture about Chinese E-commerce legislation: **The component of the E-commerce ecosystem**: application, service, environment.
The map of E-commerce services

- **Support Services**
  - (Payment, logistics, digital certification, credit, data services)

- **Merchant**
  - (Individual, individual business, company)

- **Buyer**
  - (Consumers, enterprises, and other organizations)

- **Foreign buyers and consumers**

- **Listing Services**
  - (Pre-sales, sales, post-sales: display, information disclosure, order processing, consultation, maintenance, return, complaint handling, etc.)

- **Platforms**

- **Merchant Association and Industry Associations**

- **衍生服务**
  - (Operation, store decoration, training, models, store转让)

- **Legal and regulatory**
  - (Legislation, policy, standards, contracts, courts, administration, enforcement, etc.)
Therefore, the difficulties of E-business come from mainly two aspects:

First, facing plentiful new main parts, subjects and behavior, different to off-line trading.

New subject: trading platform, purchasing, websites
New service: Including third-party board service, purchasing service, some main service and derivative service

Second, E-business’s complexity mainly shows on the complexity and diversity of trading relationship.
Fourth picture about Chinese E-commerce legislation: Compare between management of on-line and off-line
**Managements on-line are more various.** Such as, Taobao has the rules about dock point, “lock in a small room”, limit the number of new online product, which is hard to realized off-line.

**Managements on-line distribute more balance.** However, managements off-line concentrate more on after-trading than before-trading and during-trading; basing on transparent information and trading record, on-line management can bring many measures which work even before anything bad happens.

**Management on-line is all-round.** Managements off-line are always just about seller but not about the buyer; but there are also credit record of buyer online.
Persist in the problem-oriented policy and base on practical issues

This means, the legislation cannot solve all the E-commerce problems. We only resolve the things can be figure out.

Now we have only one year, but the arguments are more than common views.
E-commerce Law regulates issues in E-commerce field that are peculiar and urgent and E-commerce Law should have its own genes, characteristics and fields. For example, issues like promoting development, eliminating legal obstacles, upgrading of governance of the government, regulating existing rules into laws, clarification of platform responsibility, promoting cross-border E-commerce and dispute settlement mechanism should be stressed.

Thus, we can avoid conflict with other laws in execution. To solve these interlinked problems, we should mainly rely on making amendments on relevant laws rather than solely depending on E-commerce Law.

Based on these considerations, issues like consumer protection in E-commerce, Internet unfair competition, tax revenue of E-commerce, personal information protection, electronic payment and E-commerce credit are mentioned, but these issues are not covered in separate chapters.
Encouraging exploring governance innovation is the only way to improve governance

The first, in this highly innovative and active e-commerce market, we need to depend on innovative ideas and means, Internet thinking, and big data technology to solve a lot of new governance problem and then achieve the transformation and upgrading of governance. The supervision which can match with e-commerce—the distinct form of business—must be based on using internet to manage internet and governance innovation and must be in e-government form.

We cannot simply use old ideas to solve problems. For example, “one office site with multiple licenses” was strictly forbidden, but in 2010 the market administration bureau in Shenzhen boldly broke up the regulation, permitted e-commerce enterprise applying for one site with multiple licenses.
The second, e-commerce management puts emphasis on social governance, instead of making government the only dominant force. It depends fully on platform, network operators, internet users and professional institutes. It also adapts new methods such as credit system and big data technology to carry on dynamic governance.

The third, the supervision of e-commerce emphasize that the logic of “seeing is believing” must be unreliable. We need to abandon the thoughts that atomic must be more reliable than bites and that face-to-face audit is more trustworthy than online audit. These thoughts violate the non-discrimination principle established by international e-commerce legislation.
The forth, the character of e-commerce governance is more afterwards principle, and due supervision principle, in order to achieve the transformation from management to governance and service.

Disorder is not certainly bad. Chaos is disorder, but it is also the most vital one. We need to take full advantage of ecology concept to govern e-commerce. Disturbing the order does not necessarily mean breaking laws and rules, and we only need to stop it timely when it damages legitimate interests. Some unreasonable order is ought to be broken.
The three advice for the international Internet governance

1. We can’t use our normal conception and logic to understand and govern internet. The internet just like a mirror. It let we see ourselves and our society. But these are opposite. The onceptions are not clear, the logic is not reasonable, the experiences are not useful next time, the facts are all broken up. When you ask the four companies what is their experience to success, they must reply you the same answer, no experience is the most impaotant experience. I think it's similar to jurisprudence and governance.

2. The identity verification are two parts: who am I, which one is me. The second question is more difficult. The keywords of verification “which one is me” is the method cannot be delivered to others anyway. It bind with the certain human unique correspondence. Such as iris, not the password and CA.

3. The new problem is more and more human will be instead in internet. The machine and software will have their own ideals. These happen rapidly than we imagine, these problems should be more concern.
Your comments and criticism are greatly welcomed!

Thank you!